

had to exercise some patience in getting there, but every time we have pursued our objectives since Rome to actually accomplish what we need to accomplish, we have accomplished it, so I want to go that final mile and see if we can accomplish this objective.

Mr. SMITH. Again, what is the likelihood of doing it? I mean Secretary Bolton and—

Ambassador SCHEFFER. It could be 50-50 at this stage.

Mr. SMITH. Secretary Bolton and Eagleburger, former Secretary of State, have made it clear that they thought we lost the fight 2 years ago.

Ambassador SCHEFFER. Well, as I said, we simply do not share their vision of either having lost or waging this campaign. I think you have to be in the trenches of it to recognize that other governments truly do not want, at least many other governments, truly do not want to see the United States walk out of this process. They know how valuable we can be in the long-run for this Court and therefore I would hope that we could persuade them that a reasonable accommodation within the Treaty regime of U.S. interests is going to be to the betterment of the entire process and to the Court itself.

Mr. SMITH. I would respectfully suggest that we did lose it 2 years ago. We are trying to fix it now, and I obviously wish you success. We all would wish you success on that, but, you know, you mentioned serious repercussions or serious consequences. I think we are more likely to avoid that if we are very specific in saying this or that happens. Predictability I think is your friend now. Can you elaborate on some of the consequences if we lose?

Ambassador SCHEFFER. Well, as we have already stated to our colleagues in other governments in letters that the Secretary of Defense has sent to his counterparts, we would have to re-evaluate our ability to participate in military contingencies if we cannot prevail on that, and I think that is a fairly powerful consequence.

In addition to that, I think governments truly are having to gauge what is the consequence if the United States cannot be a good neighbor to this treaty. It will severely cripple the operation of this Court if we cannot be a player in it.

Mr. SMITH. How would it affect peace-keeping in your view, and Mr. Slocumbe, you might want to add your views on peace-making as well?

Ambassador SCHEFFER. I think it could have a very severe impact on that. Walt?

Mr. SLOCOMBE. What the Secretary of Defense said in his letter was unfortunately a negative result—that is, a negative result with respect to the article 98 effort—could have a major impact on our decision whether to participate in certain types of military contingencies.

That is what he said. I would not see that as an absolute judgment that we will never send American troops overseas in any situation, but it would have to be a factor we would have to take into account.

Mr. SMITH. Just getting back to the legislation, and I know in its current form you have made it clear you don't support it, but can you not at least admit there is some value in again broadcasting to the world that we are very serious and that the Congress is very serious about there being very negative consequences if this thing proceeds and we are included, having not been made a party to it, having not ceded or signed it?

Ambassador SCHEFFER. Well, I think there is some value to it and the mere existence of the legislation I think has sent that signal very loudly and clearly.

What I am saying is that actual adoption of this legislation would then have the re-

verse effect on our ability to actually negotiate our common objective.

Mr. SMITH. Let me just take that one step further. I mean the President obviously would have the capability of vetoing the bill if he thought it was not the right vehicle.

But let me point out that the Congress also has prerogatives, and we do fund peace-keeping. We obviously provide the necessary and requisite moneys for our military. It seems to me that we need to be very much a part of this because the outcome could be a disaster going forward for the world and for U.S. men and women in uniform who may be deployed overseas.

As I have read this, and I have read just about everything I can get my hands on, I have grave concerns. I said at the outset that no one has been more favorably inclined toward ad hoc tribunals than I am. When we had the first hearings in the Helsinki Commission on what became the Yugoslavian Tribunal we were being told by its leader, the man that was charged by the United Nations to take on the responsibility, that it was designed to fail, that he had been given insufficient resources, that it was nothing but fluff in order to placate certain individuals in countries, but it really was not a serious effort.

Now if we go in the other extreme and all of a sudden pass or enact something that potentially could prosecute the President or our Secretary of State or Defense or Supreme NATO Allied Commander, I think we have erred significantly as well, and I don't think there has been enough vetting of this issue.

I think a very small group of people have decided this. As I mentioned earlier, you know, I really want to take a look at who the actual participants were. We have heard that NGO's were filling the seats and taking on the responsibility of negotiating rather than the respective governments, who were kind of like brushed aside and the designated hitters were making decisions. That is serious if that indeed turns out to be the case. So I think there has been far less scrutiny brought to this, and hopefully these hearings are the beginning of even more focus by the Congress, but I thank you for your testimony.

Mr. TANCREDO is here. Do you have any comments?

Mr. TANCREDO. No.

Mr. SMITH. I do thank you for your comments. We look forward to working with you in the future.

Ambassador SCHEFFER. Thank you, Mr. Chairman.

Mr. SLOCOMBE. Thank you, Mr. Chairman. [Whereupon, at 11:51 a.m., the Committee was adjourned.]

Mr. LANTOS. Mr. Chairman, I yield 1½ minutes to my colleague, the gentleman from Rhode Island (Mr. KENNEDY).

Mr. KENNEDY of Rhode Island. Mr. Chairman, maybe either the gentleman from New Jersey (Mr. SMITH) or my friend and colleague, the gentleman from Texas (Mr. DELAY), could answer this question. And that is, if we do not sign this treaty, then we will not have primary jurisdiction over our soldiers; meaning if we do sign this treaty, our soldiers are under the jurisdiction of our courts; but if we pass the DeLay amendment our soldiers will be under the jurisdiction of another country and/or the ICC that the gentleman purports he does not want our soldiers to be subject to.

Mr. DELAY. Mr. Chairman, will the gentleman yield?

Mr. KENNEDY of Rhode Island. Mr. Chairman, on the gentleman's time. I do not have the time. The gentleman has more time than we do.

Mr. DELAY. Mr. Chairman, will the gentleman yield?

Mr. KENNEDY of Rhode Island. Mr. Chairman, on the gentleman's own time I will yield. It is his amendment. If he wants to answer the basic question.

Mr. DELAY. The gentlemen asked me a question. He controls the time. Would he like an answer?

Mr. KENNEDY of Rhode Island. I control the time and I am not going to yield. I would like to ask the gentleman from Texas (Mr. DELAY), who is offering this amendment, to explain his amendment and explain to this House that what he is trying to do he actually does not do, because the very service member who he is purporting to protect actually will end up subject to other foreign nations' courts, and not our own, if we pass this DeLay amendment. I would ask the gentleman from Texas (Mr. DELAY) on his own time to explain why his amendment does exactly the opposite of what he purports it to do.

Mr. DELAY. Mr. Chairman, I yield 1 minute to the gentleman from Indiana (Mr. BUYER).

Mr. BUYER. Mr. Chairman, let me take a shot at this. Since I am also a JAG officer and I have been in a theater of war, what the gentleman from Rhode Island (Mr. KENNEDY) is purporting I would say is false. When a war is fought, it is fought under the laws of war. There are also the Geneva Conventions. Our country has treaties with other countries. We have memorandums of understanding. We have exchanges of letters with regard to the jurisdiction and who can prosecute whom under what circumstance.

I am going to support the DeLay amendment because I do not want our military to be tried by Iraq or some other nation out there. If we have a nation, take Germany, for example, and that military officer or an enlisted person commits a crime in the line of duty, we prosecute those; we take care of that. If they commit an offense in the civilian, outside the line of duty, they are prosecuted by Germany. That occurs out there.

I think we need to pause and really think whether we want to subject our military to an international court.

Mr. LANTOS. Mr. Chairman, I reserve the balance of my time.

Mr. DELAY. Mr. Chairman, I yield 1 minute to the gentleman from Indiana (Mr. PENCE).

Mr. PENCE. Mr. Chairman, I thank the gentleman from Texas (Mr. DELAY) for yielding me this time.

Mr. Chairman, I am grateful that the distinguished majority whip, the gentleman from Texas (Mr. DELAY), has given me this time, and I appreciate his efforts and his diligence in defending our men and women in uniform who, but for this amendment, might be